does not show that the appellant took delivery of the bundle containing the RM1,000. The bundle was placed by him on the table and it was for the OCPD and the OCPD was present. It had been left unwrapped on the table. And all that the appellant did was to wrap it up and put it in front of the OCPD. Hanapiah did not hand over the bundle to the appellant and the appellant's mere act of wrapping up the bundle and placing it on the table before the OCPD cannot constitute acceptance of the bundle by him from Hanapiah. That the appellant subsequently delivered the bundle to the OCPD's wife at the OCPD's house cannot be said to be an act that supports the inference that he received the money on behalf of the OCPD at his office. In fact from all the evidence that was adduced the clear inference is that it was the OCPD who received the money. In the circumstances the conviction and sentence on the third charge cannot stand and I therefore allow the appeal on the third charge and set aside the conviction and sentence therein.

In passing I would like to state that I had considered, in the light of the evidence on the third charge by Hanapiah and witnesses from the Anti Corruption Agency and of the defence evidence, whether a conviction could have been had against the appellant for corruptly soliciting from Hanapiah an illegal gratification of RM1,000 on 23 May 1978 for the OCPD to refrain from taking further action against Hanapiah and Daud and for the OCPD to return to Hanapiah his gun under s. 3(a)(i) of the Act; and whether at appeal stage I should substitute a conviction for the offence of his corruptly soliciting a bribe. I am, however, doubtful whether such a course is open to me bearing in mind there is no consent under s. 26 of the Act by the Public Prosecutor to prosecute the appellant for the offence of soliciting a bribe which, on the facts stated by Daud, appears to have been committed by the appellant on 23 May 1978.

To sum up, I allow the appeal on all three charges and I set aside the convictions and sentences thereon. The learned President imposed a penalty on the appellant to pay RM1,500 under s. 30 of the Act. The order is set aside and if the amount has been paid to the court by the appellant it should be refunded.

ORIENTAL INSURANCE CO. LTD. & ANOR.

v.

MINISTER OF FINANCE

HIGH COURT, JOHOR BAHRU
DATUK L.C. VOHRAH J.
[ORIGINATING MOTION NO. 25-5-1990]
11 AUGUST 1992

ADMINISTRATIVE LAW: Application for certiorari - Exercise of discretionary power by the respondent - Section 129 Customs Act 1967 - Whether respondent misdirected himself - Whether exercise of discretion subject to judicial intervention - Whether subjective or objective standard to the applied.

The applicants made an application to the respondent under s. 129 Customs Act 1967 for the return of a car, which was rejected. The applicants then applied for an order of certiorari to quash the order of the Deputy Minister of Finance, constitutionally exercising the powers of the respondent, rejecting the applicants' application.

The second applicant was the registered owner of the said car and had reported the car stolen on 12 October 1986. On 26 May 1988 the second applicant was informed by the Customs Department that the car had been seized for conveying contraband and on 8 August 1989 the car was forfeited by the Magistrate's Court. The second applicant had subrogated his rights and remedies in respect of the said car to the first applicant after settlement of the second applicant's claim under a policy of insurance.

There was no dispute that the car was in fact stolen and that the second applicant was an innocent party in respect of the commission of the customs offence.

The question for the determination of the court was whether the Deputy Minister had misdirected himself in rejecting the application for delivery of the car by failing to take into account self-evident facts which were favourable to the applicants.

Held:

[1] The car was being deliberately withheld even though its ownership was known, contrary to public policy which dictates protection of a person's right to property.

[2] Applying the objective standard to the decision of the Deputy Minister not to return the car to the rightful owner showed that it was irrational being so outrageous in its defiance of logic and/or accepted moral standards that the consequence was manifest injustice caused to someone who was completely innocent of any wrong-doing and who had been deprived of property, his ownership of which was never in question.

[3] The Deputy Minister having professedly exercised good faith must then in rejecting the appeal have misdirected himself by failing to take into account self-evident facts favourable to the applicants.

[Application allowed].

Cases referred to:
CCSU v. Minister for the Civil Service [1984] 3 All ER 935 at p. 950 ***(foll)***
Associated Provincial Picture Houses Ltd. v. Wednesbury Corp. [1947] 2 All ER 680, [1948] 1 KB 223 ***(foll)***
Edwards (Inspector of Texas). v. Bairstow [1955] 3 All ER 48 / [1956] AC 14 ***(refd)***
Sinjo Credit & Leasing Sdn. Bhd. v. Minister of Finance Malaysia [1987] 2 CLJ 263 ***(dist)***
Minister of Labour, Malaysia v. National Union of Journalists, Malaysia and another appeal [1991] 1 CLJ 31 / [1991] 1 MLJ 24 ***(foll)***

Legislation referred to:
Customs Act 1963, s. 129

For the applicants - T. Balaskanda; M/s. Zaman & Associates
For the respondent - Abdul Roni bin Abdul Rahman, Federal Counsel

JUDGMENT

L.C. Vohrah J:
This was an application for an order of *certiorari* to remove into this Court for the purpose of having it quashed the order dated 13 December 1989 made by the Deputy Minister of Finance exercising constitutionally the powers of the respondent whereby the applicants' application under s. 129 of the Customs Act 1967 ("the said section") for the return of a car bearing registration number SBB 6676B was rejected.

The facts relevant to the application were as follows:

On the night of 12 October 1986 whilst the second applicant and his friends were having a meal at the Sentosa Complex, Johor Bahru his car which was parked there was stolen. He reported the theft to the police the next morning at 12.35 a.m. soon after the incident. On 26 May 1988 he was informed by the Customs Department that the car had been seized for conveying contraband in the form of textiles and on 8 August 1989 this car was forfeited by the Magistrates' Court after an enquiry as there had been no prosecution because the driver of the car at the time of the offence had escaped. Following the forfeiture the applicants appealed to the respondent by way of the application under the said section for delivery of the car within one month from the date of forfeiture as statutorily stipulated. This appeal was rejected by the Deputy Minister on 13 December 1989.

There was no dispute that the second applicant had subrogated his rights and remedies in respect of the car to the first applicant after settlement of the second applicant's claim by the first applicant under a policy of insurance. There was also no dispute that the second applicant was an innocent party in respect of the commission of the customs offence.

The sole question for determination was whether the Deputy Minister had misdirected himself in rejecting the application for delivery by failing to take into account self-evident facts which were favourable to the applicants.

In *CCSU v. Minister for the Civil Service* [1984] 3 All ER 935, Lord Diplock had this to say (at p. 950):

> ... Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds ...
>
> By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.* [1947] 2 All ER 680, [1948] 1 KB 223). **It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.** To justify the Court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards (Inspector of Taxes) v. Bairstow* [1955] 3 All ER 48, [1956] AC 14 of irrationality as a ground for a Court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all.

(Emphasis added)

On behalf of the applicants it was contended by learned Counsel, Mr. Balaskanda, that the decision of the Deputy Minister could not stand on the ground of "irrationality" because he had erred in law on the face of the record in that he had misdirected himself by failing to take into account the following facts

1) that the car used for the commission of the offence had actually been stolen;
2) that the applicants had not committed any offence under the Act pursuant to which the car was forfeited;
3) that public policy demanded that stolen property be returned to its rightful owner;
4) that the fact of not returning stolen property to the rightfully owner was against the public good; and
5) that the applicants had been innocent victims of two crimes, the first under the Penal Code and the second under the Act.

On the other hand, it was contended by learned Federal Counsel on behalf of the respondent that the Deputy Minister had based his decision on facts which were put before him and was fully aware of the status of the car when he rejected the appeal from the applicants under the said section and consequently the exercise of his discretion in the circumstances was not subject to judicial intervention. Of the authorities cited by learned Federal Counsel I found only the case of *Sinjo Credit & Leasing Sdn. Bhd. v. Minister of Finance Malaysia* [1987] 2 CLJ 263 of any real relevance wherein it was observed by Shanker J. in relation to the said section that the mere fact that the owner of a vehicle was innocent of the offence for the commission of which the vehicle was used, did not entitle him as a matter of right to have an order from the Minister for the return of his vehicle to him. It was also observed by the learned Judge that the said section did not impose upon the Minister any duty to give reasons for his decision but required that he "consider all the material placed before him and decide in good faith". The application for leave for an order of *certiorari* in that case was dismissed and the learned Judge found that there was evidence from the notes of evidence of the inquiry which the Minister had had before him that the hirer was thoroughly unreliable from which it could be inferred that the hire-purchase company did not take adequate steps to investigate the *bona fides* of the person to whom they were providing the car.

It was obvious to me in the present case that no wrongdoing could in any way be attributed to any of the applicants. It occurred to me in the circumstances that the car which had been stolen was in fact being deliberately withheld even though its ownership was known, action so obviously contrary to public policy which dictates protection of a person's right to property. If the contention put forward by the learned Federal Counsel were to be accepted it would in effect have meant the recognition of the proposition that when discretionary powers are given to a member of the executive the test to be applied is a subjective test, a proposition which was rejected by the Supreme Court in *Minister of Labour, Malaysia v. National Union of Journalists, Malaysia and*

another appeal [1991] 1 MLJ 24 at p. 28. It was clear that if an objective standard had been applied the decision of the Deputy Minister not to return the car to the rightful owner in the light of the facts enumerated by Mr. Balaskanda was irrational being so outrageous in its defiance of logic and/or accepted moral standards that the consequence was manifest injustice caused to someone who was completely innocent of any wrong doing and had been deprived of property, his ownership of which was never in question. In the circumstances I was of the view that the Deputy Minister having professedly exercised good faith must then in rejecting the appeal have misdirected himself by failing to take into account self-evident facts favourable to the applicants.

I accordingly made an order in terms of the application.

R & I SECURITIES SDN.

v.

SYARIKAT TANAMAN DAN PERUSAHAAN PERAK SDN. BHD

HIGH COURT, JOHOR BAHRU
DATUK L.C. VOHRAH J.
[CIVIL SUIT NO. 277 OF 1979]
3 AUGUST 1992

CONTRACT: Agreement for sale and resale of shares - Fraudulent and illegal transaction - Knowledge of fraud and illegality - Effect - Consideration - Charge created after execution of agreement - Past consideration - Effect - Non-existence of subject matter of agreement - Whether claim enforceable - Breach of provisions of Exchange Control Act 1953 - Whether transaction legal.

An arrangement was entered into in May 1975 in which the plaintiff stockbroking company was to sell two blocks of shares by order and for account of HKSL to P and C, who were in turn to resell their respective shares at an enchanced price back to HKSL. The defendant executed documents upon which the defendant was alleged to have given a guarantee to the plaintiff for the purchase of the shares. In the event HKSL did not take up the shares, which were purportedly resold, on the ground that HKSL did not exist at all material times. The plaintiff claimed that the resale to HKSL was at the inducement and guarantee by the defendant that HKSL would pay for the shares. The defendant averred that the transaction was a sham, that no inducement was applied nor guarantee given. It further averred that the plaintiff had full knowledge of the fraudulent and illegal transaction, that the non-existence of HKSL made the inchoate charge instrument void and unenforceable and that the transaction contravened the exchange control legislation.

Held:

[1] The plaintiff was fully aware that this transaction was not a normal and a genuine stock exchange transaction.

[2] The charge and the Directors' resolution authorising the creation of the charge, having been executed well after the agreement in May 1975, the consideration given was past consideration and bad in law.